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November 6, 2006

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing
Date of Filing: June 9, 2006
Case Number: TSO-0393

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ A local DOE Security Office (LSO) suspended the individual's access authorization pursuant to the provisions of Part 710. In this Decision I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be restored. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should be restored.

I. Background

The DOE granted the individual a security clearance in 2000 after the LSO had resolved some issues regarding the individual's consumption of alcohol. The LSO revisited the individual's alcohol use in 2002 after the individual was arrested for Driving Under the Influence (DUI) while on a military deployment. In July 2005, the individual reported that he had received another DUI. This revelation prompted the LSO to conduct a Personnel Security Interview (PSI) with the individual on October 24, 2005. After the PSI, the LSO referred the individual to a board-certified psychiatrist for a forensic mental evaluation. The board-certified psychiatrist examined the individual in January 2006, and memorialized his findings in a report (Psychiatric Report or Exhibit 3). In the Psychiatric Report, the board-certified psychiatrist opined that the individual had been a user of alcohol habitually to excess in the past and had not shown adequate evidence of rehabilitation or reformation as of January 2006. Ex. 3 at 9.

¹ Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

In June 2006, the LSO sent the individual a letter (Notification Letter) advising him that it possessed reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. The LSO also advised the individual that the derogatory information fell within the purview of one potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsection (j) (hereinafter referred to as Criterion J).²

Upon his receipt of the Notification Letter, the individual, through his attorney, exercised his right under the Part 710 regulations and requested an administrative review hearing. On June 12, 2006, the Director of the Office of Hearings and Appeals (OHA) appointed Steven L. Fine as the Hearing Officer in this case. The OHA Director re-assigned this case to me and delegated me as the substitute Hearing Officer on June 19, 2006. Subsequently, I convened a hearing in the case. At the hearing, four witnesses testified. The LSO called one witness and the individual presented his own testimony and that of two witnesses. In addition to the testimonial evidence, the LSO submitted 26 exhibits into the record; the individual tendered two exhibits.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting him an access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h).

² Criterion J relates to information that a person has “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. § 710.8 (j).

B. Basis for the Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concern at Issue

As previously noted, the LSO cites Criterion J as the basis for suspending the individual's security clearance. To support Criterion J, the LSO relies on (1) a board certified psychiatrist's opinion that the individual has been a user of alcohol habitually to excess; (2) the individual's two arrests for DUI, one in 2002 and the other in 2005; and (3) statements made by the individual in three personnel security interviews regarding his drinking habits.

I find that the information set forth above constitutes derogatory information that raises questions about the individual's alcohol use under Criterion J. The excessive consumption of alcohol is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. *See* Guideline G of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House.

IV. Findings of Fact

The individual has undergone three PSIs and been evaluated three times by two different DOE consultant-psychiatrists. The first PSI (PSI #1) occurred in 2000 when the individual was an applicant for a DOE security clearance. Ex. 10. At the time, the LSO was concerned about the individual's alcohol usage. During PSI #1, the individual stated that he agreed with his friends' assessment that he consumed too much alcohol. Ex. 10 at 75-76. After PSI #1, the LSO referred the individual to a DOE consultant-psychiatrist (hereinafter referred to as DOE consultant-psychiatrist #1) for a psychiatric examination. DOE consultant-psychiatrist #1 examined the individual in July 2000 and concluded that the individual's drinking was not "at a maladaptive level" and that he did not suffer from a mental condition that would interfere with his judgment and reliability. *See* Ex. 6. Based on DOE consultant-psychiatrist #1's medical opinion, the LSO resolved the security concerns associated with the individual's alcohol consumption and the DOE granted the individual a security clearance.

On October 19, 2002, the individual was arrested and charged with DUI. Ex. 3 at 7. The individual's blood alcohol content (BAC) measured .166 at the time of his 2002 arrest. Ex. 9 at 19. The individual paid a fine and attended a 16-hour Alcohol and Drug Treatment Program. Ex. 5 at 2; Ex. 15. The individual was on active military reserve duty at the time of the 2002 DUI. When the individual returned to work with a DOE contractor in June 2003, he notified the LSO of the arrest. Ex. 5 at 2. The LSO conducted its second PSI (PSI #2) with the individual on November 7, 2003. During PSI #2, the individual told the personnel security specialist that while he was in the military he would engage in binge drinking all night on weekends once every two or three months. Ex. 9 at 34-35. After PSI #2, the LSO referred the individual for a second psychiatric examination with DOE consultant-psychiatrist #1. DOE consultant-psychiatrist #1 examined the individual in January 2004 and concluded first that the 2002 DUI was an isolated incident, and second that the individual had no diagnosable alcohol problem. Relying on DOE consultant-psychiatrist #1's opinion, the LSO resolved the security concerns connected with the individual's 2002 DUI and continued the individual's security clearance. Ex. 5.

In July 2005, the individual was arrested and charged with DUI after a BAC test yielded a result of .10. Transcript of Hearing (Tr.) at 59. The individual was ordered to pay a fine, attend DUI classes, and serve 60 days in jail. Ex. 8 at 21-25. The individual's 2005 DUI arrest prompted the LSO to conduct its third PSI (PSI #3) with the individual to explore the individual's level of alcohol consumption and the circumstances surrounding his 2005 DUI. Ex. 8. During PSI #3, the individual told the personnel security specialist that his father had expressed concern about his excessive alcohol use. *Id.* at 56. After PSI #3, the LSO referred the individual to DOE consultant-psychiatrist #2. DOE consultant-psychiatrist #2 examined the individual in January 2006 and determined that the individual has had periods in his life where he drank habitually to excess but never reached the point of suffering from Alcohol Abuse or Alcohol Dependence. Ex. 3 at 9. DOE consultant-psychiatrist #2 opined that the individual was in the early stages of reformation in January 2006 but found that it was too early to feel confident that the individual would not relapse in the future. *Id.*

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c).³ After due deliberation, I have determined that the individual's access authorization should be restored. I find that restoring the individual's security clearance will not endanger the common defense and security and is clearly consistent with the national interest.

³ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

1. Habitual Use of Alcohol to Excess

The individual does not dispute that he used alcohol habitually to excess during certain periods prior to his most recent DUI in 2005. Since there is no dispute in this regard, the central issue before me is whether the individual is rehabilitated or reformed from his past habitual use of alcohol to excess.

2. Rehabilitation or Reformation

The individual testified convincingly that he has abstained entirely from alcohol since July 2005. Tr. at 59. The individual's friend who socializes frequently with him confirmed this fact at the hearing. Tr. at 51. The individual also testified that a few months after he was arrested for DUI in 2005, he voluntarily sought counseling from a clinical psychologist affiliated with the Employee Assistance Program at his place of employment. *Id.* at 64. The clinical psychologist who is treating the individual confirmed at the hearing that she began treating the individual in October 2005. *Id.* at 15. The individual testified that following the 2005 DUI, he made some dramatic changes in his life. He testified that he first changed his group of friends because all his former friends liked to do is "party." *Id.* at 66. Next, he broke up with his girlfriend who worked at a bar. *Id.* at 71. He explained that after he decided not to drink alcohol, he realized that he no longer had anything in common with his girlfriend. *Id.* Third, he moved his residence to another city in order to sever his ties with his girlfriend and old friends. *Id.* at 73. Fourth, he has established a group of new friends from a church that he joined when he relocated his to the new city. *Id.* at 68. His current friends do not consume alcohol and they encourage him in his efforts to remain sober. *Id.* at 78-79. He has become closer with his father who is a drug and alcohol counselor. *Id.* at 70. According to the individual, he and his father discuss the value of abstaining from alcohol in light of the father's own recovery from a drug and alcohol addiction. *Id.* The individual testified that when he was drinking, the only thing that mattered to him was the weekend. *Id.* at 64. In contrast, the individual now has established goals for himself in order to remain sober. *Id.* at 75. Specifically, he has returned to school in order to advance in the workplace and is trying to gain additional custodial rights to his son. *Id.* at 91. The individual persuaded me that he has no intention of returning to his former lifestyle regardless of the outcome of his security clearance issue. *Id.* at 80. He testified, "I'm happy with who I have become. Jobs can come and go but I'm the one who has to live with me in the end." *Id.* at 83.

The individual's friend testified that four years ago, he and the individual would go out to bars and nightclubs and drink five to six drinks in a four-hour period. *Id.* at 45-46. According to the friend, the individual's life now is "a total 360 degrees" from where it was four years ago. *Id.* at 52. The friend has socialized with the individual since July 2005 and has observed that the individual no longer consumes alcohol. *Id.* at 51. The individual told him that he does not intend to drink again because of "the financial, psychological and social burden" that drinking has caused the individual. *Id.* at 50. When the friend and his girlfriend go out where alcohol is present, the individual offers to drive

them but will not accompany them into the establishment. *Id.* If they go out to a restaurant, the friend will have a beer but the individual will not drink any alcohol. The friend related that the individual has distanced himself from people “getting plastered.” *Id.*

The clinical psychologist who is providing psychotherapy to the individual testified that her counseling focuses on: (1) assisting the individual to maintain his sobriety; (2) identifying triggers that could cause him to return to drinking; and (3) helping him gain insight into the impact that his early family environment (both parents abused drugs and alcohol) had on his destructive behavior. *Id.* at 16, 18-19. According to the clinical psychologist, it was essential for the individual to change his social network in order to maintain his sobriety. *Id.* at 21. The individual left his girlfriend with whom he co-habited, changed his group of friends and became involved in his church. *Id.* at 17-21. The clinical psychologist testified that she has treated the individual since October 2005 and that the individual has shown “full commitment to continuing in treatment” with her. *Id.* at 22. She gave the individual a very good prognosis in view of his “attitudinal motivation and commitment.” *Id.* at 21. She opined that the individual is now rehabilitated from his habitual use of alcohol to excess.⁴ *Id.* at 23.

DOE consultant-psychiatrist #2 testified after listening to the testimony of the individual, his friend, and the clinical psychologist. First, DOE consultant-psychiatrist #2 related that when he examined the individual in January 2006, the individual was in the early stages of reformation. *Id.* at 95. In this regard, he pointed out that the individual had abstained from alcohol since July 2005, had undergone a four-month court-ordered DUI program (Ex. B), and had begun counseling with the clinical psychologist in October 2005. *Id.* at 95. DOE consultant-psychiatrist #2 explained that in January 2006 he had recommended one full year of monitoring and treatment because “most experts would agree that 12 months is needed to establish some newer, healthier habits and coping strategies.” *Id.* at 97. Next, DOE consultant-psychiatrist #2 opined that the individual had demonstrated adequate evidence of reformation because new information provided at the hearing was impressive and substantive in nature. *Id.* at 99. Specifically, as of the date of the hearing, the individual had 14 months of sobriety, had changed his friendship group, had given up a girlfriend who was a bad influence on him, had shown a serious interest in improving himself by returning to school, and had undergone 11 months of counseling with the intent of continuing in the program. *Id.* at 99-101.

Hearing Officer Evaluation of Evidence

The evidence in this case convinces me that the individual has mitigated the security concerns connected with Criterion J in this case. As an initial matter, two different mental health experts testified convincingly at the hearing that the individual is now rehabilitated or reformed from his past habitual use of alcohol to excess. Moreover, it is my common sense determination that the individual presented compelling evidence that he has

⁴ The clinical psychologist does assessments for the DOE’s Human Reliability Program (HRP). *Id.* at 10. Prior to his security clearance suspension, the individual participated in the HRP Program. According to the clinical psychologist, if the individual returns to the HRP program, he will be monitored continuously for one year for any alcohol usage. *Id.* at 23.

reformed his behavior in a manner that supports his sobriety in the future. Specifically, I was convinced from the individual's testimony and that of his friend that the individual has dramatically changed his lifestyle to support his sobriety. By severing ties to his old friends who drank excessively, leaving his girlfriend who worked at a bar and enjoyed drinking, and locating to a new city, the individual has demonstrated a clear, compelling commitment to modify his behavior in a manner supportive of sobriety. In addition, the individual now has a new set of friends from a church that he joined who appear committed to helping him continue on his road to recovery. The individual's decision to seek help from the EAP Counselor three months before he visited DOE consultant-psychiatrist #2 suggests to me that he did not embrace alcohol counseling simply for its evidentiary value at an administrative review hearing. Instead, his decision to enter treatment voluntarily in October 2005 suggests that the individual was internally motivated to gain insight and support for his new sober lifestyle. In the end, the probative testimonial evidence in this case mitigates the security concerns associated with Criterion J.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criterion J. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has brought forth sufficient evidence to mitigate the security concerns at issue. I therefore find that restoring the individual's access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Ann S. Augustyn
Hearing Officer
Office of Hearings and Appeals

Date: November 6, 2006